IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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WRIT PETITION No. 16575 of 2004 & Contempt Case No.22 of 2005

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1) WRIT PETITION NO : 16575 of 2004

Between:

D.Balaraju, S/o Narsaiah, Salesman(under suspension),
Orugallu District Co-op Marketing Society Ltd., Warangal,
Warangal District

..... PETITIONER

AND

1 The Joint Collector/ Chairperson, Orugallu District
Co-Op Marketing Society Ltd., Warangal, Warangal District
2 The Business Manager / Co-op Sub-Registrar, Orugallu
District Co-Op Marketing Society Ltd., Warangal, Warangal District

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of Writ of Certiorari calling for the records relating to proceedings Rc.No.18/Estt/Dues/2004, dated 31-8-2004 on the file of the 2nd respondent and quash the same as illegal, improper, null and void and violative of Principles of Natural Justice.

Counsel for the Petitioner: MR.M.YESHWANTH KUMAR

Counsel for the Respondents: Smt. P.Revathi

2) CONTEMPT CASE NO : 22 of 2005

(Contempt Case U/s. 10 to 12 of Contempt of Courts Act to punish the Respondents herein for violating, disobeying the Order of the High Court dated 10.12.2004 in WPMP No21638 of 2004 in WP No. 16575 of 2004.

Between:

D. Balaraju, S/o Narsaiah, Salesman,
O/o Orugallu District Co-op Marketing Society Ltd., Warangal.

..... PETITIONER

AND

1 Syed Omer Jaleel, Joint Collector/Chairperson, Orugallu
District Co-op Marketing Society Ltd., Warangal
2 S. Swamy, Orugallu, Business Manager/Co-op. Sub Registrar,
District Co-op Marketing Society Ltd., Warangal, Warangal Dist.

.....RESPONDENTS

Counsel for the Petitioner: MR.M.YESHWANTH KUMAR

Counsel for the Respondents: SMT.P.REVATHI

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No. 16575 of 2004 &

Contempt Case No.22 of 2005

COMMON ORDER:

Heard Sri M.Yeshwanth Kumar, learned counsel appearing for the petitioner and Smt. P.Revathi, learned counsel appearing on behalf of the respondents.

The petitioner, who has been working as Salesman in the respondents-society, filed the Writ Petition seeking for a Writ of Certiorari challenging the validity of the orders dated 31.08.2004 passed by the second respondent placing him under suspension, as bad, illegal and void.

Pending the above Writ Petition, this Court granted interim direction suspending the said orders of suspension, as per order in W.P.M.P. No.21638 of 2004, dated 10.12.2004. Complaining that the said order was not being implemented, the petitioner filed the Contempt Case No.22 of 2005.

The case of the petitioner, in brief, is that he belongs to B.C. community and hails from a poor family. He was initially appointed as Weigh man in the year 1988 and later on promoted as Salesman in the year 1996. While he was discharging his duties, though to the utmost satisfaction, during the year 2001-2002 on certain allegations, he was placed under suspension and an enquiry was ordered, *inter alia,* on the allegations that he purchased needy fertilizers from private dealers through bills and supplied the same to the farmers on subsidy rates and after collecting 50% from them and 50% from the officials, the entire bill amount was paid to the dealers and cash bills and no due certificates were obtained from the dealers and the same were filed with the officials, however, in regard to certain transactions, the petitioner committed certain irregularities. Subsequently, after enquiry report was filed on 16.10.2003 in favour of the petitioner, he was reinstated from 21.10.2003. However, now, on the basis of the letter dated 21.06.2004 from A.D.A. (R) (AG), Eturnagarm in respect of the very same transactions and allegations pertaining thereto, the petitioner was once again placed under suspension as per the impugned proceedings dated 31.08.2004. Therefore, the case of the petitioner, in short, is to the effect that having already once found that

the petitioner was not responsible in respect of the same allegations and having placed under suspension earlier and reinstated on the basis of the enquiry report, he can not be put to double jeopardy by placing under suspension or even any action can not be initiated in respect of the very same allegations. Hence, the Writ Petition.

In the counter affidavit filed on behalf of the respondents, it is admitted that the petitioner was placed under suspension earlier and on the basis of the enquiry report at that time, he was reinstated. However, it was pointed out that settlement of due amounts of inputs cost to the private dealers was not taken into account by the enquiry officer because the petitioner had submitted letters of private dealers in which it was stated that there was no due receivable from either of the dealers. Therefore, on the basis of the letter of the concerned A.D.A. and having regard to the serious allegations against the petitioner involving substantial amounts, he was placed under suspension. Further, earlier reinstatement was only on humanitarian grounds proposing minor punishment as per By-laws and hence, it would not come in any way against the petitioner. It is also pointed out that the enquiry officer had been appointed to go into the charges against him as per the order dated 25.10.2004 and an arbitration reference was filed before the Deputy Registrar of Co-operative Societies, Warangal, under Section 61 of the Andhra Pradesh Co-operative Societies Act, 1964, as per the order dated 06.12.2004 and the same is pending. Having regard to the nature of the allegations as made against the petitioner, he is not entitled for any indulgence.

It is also the case of the respondents in the contempt case that having regard to the nature of allegations against the petitioner, he was rightly placed under suspension and so, he can not be given any posting and hence, no contempt arises, and sought for vacating the interim orders.

Since common question is involved and at the request of the counsel on either side, both the cases are being taken up for final disposal.

Considering the submissions made and on perusal of the material, the only question which arises for consideration in these matters is as to whether on the facts and circumstances, the suspension of the petitioner under the impugned orders as an employee of the respondents, is justified ?

There is no dispute to the petitioner's employment with the respondents, who has been working as Salesman since the year 1996. In the year 2001-2002, on certain allegations in respect of certain transactions, the petitioner was admittedly, placed under suspension and enquiry report was submitted on 16.10.2003 exonerating the petitioner. Therefore, he has been reinstated into service. However, under the impugned orders dated 31.08.2004, the petitioner was once again sought to be suspended in respect of the very same allegations pertaining to the same transactions on the basis of a letter issued by the A.D.E. concerned on 21.06.2004. Admittedly, the petitioner was not given any prior intimation, much less a show cause, as to how and why he should not be proceeded against further. Further, curiously, the impugned order neither reflects nor refers to earlier proceedings which pertains to the very same transaction whereunder the petitioner was earlier suspended and reinstated later. There is no explanation forthcoming either in the counter affidavit or during the course of arguments as to why the impugned proceedings are totally silent about the earlier orders of suspension and the consequent reinstatement in respect of the very same allegations. This is very fatal. Apparently, on the face of it, the respondents have not kept in view the reasons for reinstating the petitioner into service earlier. More so, when the transactions pertain to the year 2001-2002 and immediate action having already been taken earlier and virtually withdrawn, now at this length of time after long lapse, it is not open for the respondents herein to simply act upon any such one sided letter and take recourse to serious action of placing the employee under suspension. No further material or

circumstances have been pointed out to get over the reasons on the basis of which the respondents themselves reinstated the petitioner basing on the enquiry report dated 16.10.2003. There is nothing on record to show as to how the enquiry report dated 16.10.2003 or even the orders of reinstatement are in any way vitiated. Having kept silent for such a long time, the impugned action is wholly unjustified and arbitrary.

That apart, admittedly, the respondents have already appointed an enquiry officer in respect of the very same charges and the enquiry is pending. Even otherwise, the respondents have already raised a dispute under Section 61 of the A.P. Co-operative Societies Act, 1964 and the same is pending. Having regard to the pendency of such late hour proceedings, the respondents can not take recourse to such serious action of placing an employee under suspension. On the face of it and also even on the facts and circumstances, there is no justification in placing the petitioner under suspension. It is needless to mention that in the event the petitioner is found fault with, in regard to any such allegations either during the course of enquiry or even in the reference made, the respondents can take action as well in accordance with law. In the circumstances, the impugned action is totally vitiated and liable to be set aside.

The Writ Petition is, accordingly, allowed and the impugned proceedings dated 31.08.2004 are set aside. No costs.

Having regard to the fact that the main Writ Petition itself is disposed of, it can not be said, at this juncture, that there is any contempt. However, the respondents are directed to take back the petitioner into service with immediate effect. In the event of any non-compliance, it shall be open for the petitioner to file fresh contempt.

The contempt case is, accordingly, closed.

(B.Prakash Rao, J.)

15.04.2005

DRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on

Friday the fifteenth day of April two thousand and five.

…Registrar

Copy to:

1 The Joint Collector/ Chairperson, Orugallu District
Co-Op Marketing Society Ltd., Warangal, Warangal District
2 The Business Manager / Co-op Sub-Registrar, Orugallu
District Co-Op Marketing Society Ltd., Warangal, Warangal District

3 Two CD copies.